

MERGERS

Financial Code § 15200 authorizes a state-chartered credit union to merge with any other credit union or with a central credit union, if the merger is approved by the Commissioner of Financial Institutions. This summary is intended to provide a general description of the process to obtain the Commissioner's approval and to effect a merger. In addition, useful forms are provided to assist in meeting the statutory requirements. The sample forms are provided only as illustrations and are not required to be used.

A. General Requirements.

Pursuant to Financial Code §§ 15200 and 15201, the following general requirements must be met in order to complete a merger.

1. ***Commissioner approval:*** The merger must be approved by the Commissioner of Financial Institutions.
2. ***Board of Directors approval:*** The merger must be approved by a majority of the board of directors of each of the credit unions that is a party to the merger ("constituent credit unions"), except as described in (3)(c) below.
3. ***Membership approval:*** One of the following must apply:
 - a. ***Approval by majority of members:*** A Plan of Merger must be approved by a majority of all the members of a disappearing credit union, by vote or written consent. Notice of the meeting must be given to all members entitled to vote on the merger, either personally or by first-class mail, not less than 30 nor more than 90 days prior to the date of the meeting. No membership approval is required of a state-chartered credit union that is the surviving credit union in a merger.
 - b. ***Approval by less than a majority of members.*** If less than a majority of members approve the Plan of Merger, the Commissioner may nevertheless approve the merger if the Commissioner finds that (1) notice of the membership meeting to vote on the merger, or the ballot for written vote on the merger, was mailed to each member entitled to vote on the merger; (2) the notice or ballot disclosed the purpose of the meeting or the written vote; (3) the notice or ballot informed the membership that approval of the merger might be sought if less than a majority approved the merger, and (4) a majority of the votes cast upon the merger was in favor of the merger.
 - c. ***No membership vote, but credit union is in danger of insolvency:*** The Commissioner may approve a merger without a membership vote of a disappearing credit union that is in danger of insolvency, if a majority of the

board of directors of the surviving credit union approves the merger and other requirements are met. Such mergers involve special requirements which are beyond the scope of this summary. Any questions concerning this type of merger should be directed to the Credit Union Division.

B. Applications for Approval

A state-chartered credit union that is a party to a merger may apply for the Commissioner's approval. If the constituent credit unions are state-chartered credit unions, only one credit union needs to file an application. Typically, the surviving credit union files the application. If only one of the constituent credit unions is a state-chartered credit union, the state-chartered credit union is required to file an application.

1. ***When to file:*** A credit union may apply for the Commissioner's approval before or after the membership vote. However, because the Plan of Merger may not comply with statutory requirements or otherwise not be acceptable, it is advised that an application be submitted prior to soliciting the approval of members.
2. ***Form of Application:*** There is no required form of application to request the Commissioner's approval. The application may be made by letter or other writing. **FORM 1** is a sample form of application.
3. ***Contents of Application:*** In accordance with the requirements of Financial Code § 15201, an application should contain at a minimum: (1) an originally executed copy of the Plan of Merger and (2) evidence that the board of directors of each credit union has approved the Plan of Merger. **FORM 2** is a sample form of a Plan of Merger.

In addition, the Commissioner, in order to perform his statutory duty in determining whether to approve a merger, will need to be satisfied that the merger will be consistent with safety and soundness. To that end, the financial information relating to each of the merging parties should be included with the application. It has been an acceptable practice for applicants to file a copy of their application filed with the NCUA which contains financial information.

In the event the Commissioner's approval of a merger is sought under § 15201(b), the Commissioner will need to determine that the membership notice requirements of § 15201(b) have been met before he can approve the merger. Since there may be problems with the notice, it is advised that an applicant submit the proposed notice with the application in order that any problems with the notice can be cleared up before it is sent to members. **FORM 3** is a sample form of notice.

C. Other Merger Requirements

1. ***Notice to Members.*** Financial Code § 15201 establishes requirements relating to the notice which must be provided members. The Commissioner will need to determine that these notice requirements have been complied with before he can approve the merger. **FORM 4** is a sample officers' certificate which can be used to establish compliance with the notice requirements. For mergers under Financial Code § 15201(a), only statement "1" on **FORM 4** needs to be included. For mergers under Financial Code § 15201(b), all three statements on **FORM 4** should be included.
2. ***Secretary of State Filing.*** In order to effect the merger, certain documents are required to be filed with the California Secretary of State. Under Corporations Code § 8014 and Financial Code § 15203, the following documents will need to be filed with the Secretary of State:
 - ? The *Plan of Merger* (originally executed).
 - ? A *Certificate of Merger* for each credit union (originally executed). Financial Code § 15202 requires the Certificate of Merger to be in the form of an officer's certificate pursuant to Corporations Code § 5062 and must state: (1) that the Plan of Merger has been approved by the board of directors; (2) that the plan of merger has been duly approved by any required vote of the members pursuant to §15201; and (3) the total number of members of the credit union. **FORM 5** is a sample of a Certificate of Merger for the surviving credit union under § 15201(a) or (b). **FORM 6** is a sample of a Certificate of Merger for the disappearing credit union under § 15201(a) or (b).
 - ? A copy of the *written approval of the Commissioner*.
 - ? A copy of the *written approval of the NCUA*.
 - ? A *tax clearance certificate* issued by the Franchise Tax Board. Information regarding how to obtain a tax clearance certificate is available on the Franchise Tax Board web site at <http://www.ftb.ca.gov>.

D. Effective Date

In accordance with Financial Code § 15203, after making the required filing with the office of the Secretary of State, a copy of each certificate of merger, certified by the Secretary of State, must be filed with the Commissioner, and at that time the merger is effective for all purposes.